



Larry M. Weil, Planning Director
Steven Zimmer, Senior Planner

West Fargo Planning and Zoning Commission
February 11, 2008 at 7:00 P.M.
West Fargo City Hall

Members Present: Kim Keller
Wayne Nelson
Jason Gustofson
Terry Potter
Ross Holzmer
Frank Lenzmeier
Harriet Smedshammer

Others Present: Larry Weil, Lisa Sankey, Steven Zimmer, Benny Polacca, David Wyum, Russell and Sherri Thompson, Dan Passolt, Nancy and Brent Michelsen, Brett Waldera

The meeting was called to order by Chair Lenzmeier.

Commissioner Keller made a motion to approve the January 14, 2008 meeting minutes. Commissioner Nelson seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A08-2 Rezoning from R-1: One & Two Family Dwellings to R-2: Limited Multiple Dwellings, All of Block 1, Lots 1-11 of Block 2 & all of Block 3 of Goldenwood 3rd Addition, City of West Fargo, North Dakota.

Larry Weil reviewed the following information from the staff report:

The property, which is located north of 12th Avenue NW and west of Cass County Highway #17, was platted and zoned for a single family and twin home development in October 2006. The rezoning request is being made by the applicant to decrease side yard setbacks and increase lot coverage to allow larger twin home structures on the narrow lots. The request for rezoning is not accompanied by a replat, so there is no change to the lot layout or dimensions. The request is consistent with City plans.

The applicant wishes to have the ability to construct larger units than can be accommodated within the setback and lot coverage requirements of the R-1: One and Two Family Dwelling District. Options available to the applicant are to revise the floor plans to reduce the size of structures proposed for these lots, replat the property to increase the lot sizes, or rezone the property to an R-2: Limited Multiple Dwelling District category which will allow for a decrease in side yard setbacks and a higher percentage of the lot to be covered by buildings. With the sewer and water services already stubbed into the lots, the applicant has requested the property be rezoned.

The applicant has requested that the property be rezoned to R-2: Limited Multiple Dwelling District and has submitted some conceptual floor plans for the proposed dwellings. Under the R-2: Limited Multiple Dwelling District, the applicant will be able to reduce the side yard setback to 6' and cover up to 35% of each lot. The platted lots vary in lot width from 35.35 to 60' and in lot area from 4,646 to 8,100 ft². The bi-level floor plan would require a 36-foot interior lot and 42-foot corner lot; the rambler floor plan would require a 34-foot interior lot and 40-foot corner lot.

The R-2 District also provides for multiple family dwellings, though the lots are not platted for multiple family structures, and the developer has agreed to maintain the Low Density Residential designation of the Land Use Plan. Property owners within 150' were notified. No comments were received.

It is recommended to approve the rezoning request on the basis that it is consistent with the City's Comprehensive Plan. The developer has agreed to restrict the use to Low Density Residential.

There were no comments from the public. The hearing was closed.

Commissioner Nelson asked if there might be further requests like this from the developer. Larry stated that there may be requests for smaller lots under the new zoning category.

Commissioner Nelson made a motion for approval. Commissioner Potter seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A08-3 Conditional Use Permit for a Commercial Wireless Telecommunication's Services Tower on Lot 2, Block 1 of Eagle Run Plaza 2nd Addition, City of West Fargo, North Dakota - Great Plains Tower.

Larry reviewed the following information from the staff report:

The property is located west of Sheyenne Street (Cass County Highway #17) and north of 32nd Avenue West on 6th Street West. The applicant proposes to construct a commercial wireless tower. The proposed use requires a Conditional Use Permit within the C: Light Commercial Zoning District. The proposed use is generally consistent with City Plans and Ordinances.

The area was platted and zoned for apartments and retail commercial lease space in November of 2004. The subject property was recently part of a replat to allow for sale and development of a fire station to the north. A site plan and landscaping plan were submitted showing the tower, locations of proposed electronic shelters (buildings), and vehicle access as well as support information relating to the project and site. Also, structural plans were submitted for the tower. The applicant also provided a map of other towers in the area.

The proposed tower property is east of a retention pond and west of retail commercial property. The property to the north was recently purchased for a fire station which will be adjacent to a multiple family residential development. The tower will be located to the west side of the lot and approximately 125' north of 32nd Avenue West, just north of a power line corridor. The tower will be situated 250' from the residential property to the north. A commercial building will likely be constructed to the east of the tower and between the tower and 6th Street West.

The tower is a galvanized steel monopole type structure which will be 120' in height, plus an additional 5' of antenna on top. Under the provisions of the Zoning Ordinance, a new tower cannot be approved unless the applicant proves that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a reasonable search radius of the proposed tower. There is an existing tower about 1 ½ miles southwest of the proposed tower site. The applicant has not demonstrated that the existing tower cannot serve this area, but indicated on the application that they have been contacted by multiple carriers for the need of tower space in this vicinity. Any commercial wireless telecommunications tower must be designed to accommodate at least one additional user (carrier). The applicant is providing for two additional carriers.

The applicant needs to show that the tower complies with Federal Aviation Administration regulations. The tower is being designed by an engineering firm that specializes in steel tower construction.

Property owners within 350' were notified and no comments were received. With regards to the criteria for granting a conditional use, the following is noted:

1. Ingress and egress to the property are from 6th Street West.
2. Off street parking is being provided in front of the electronic shelters.
3. The economic, noise, glare, or odor effect of the proposed use on adjoining properties and properties generally in the district does not appear to be an issue.
4. Refuse and service areas are not required for this use.
5. It appears that utilities are adequately provided to the site.
6. Screening and buffering are shown on the landscaping plan. Landscaping consists of American Arborvitae trees located on north, south and east sides of the facilities.
7. There will be no signage.
8. Soil conditions appear to be in order for the proposed development.
9. The proposed use would appear to be located such that it is generally compatible with adjacent property and other property in the district.

It is recommended to conditionally approve the proposed request on the basis that it is consistent with City plans and ordinances. The conditions of approval are as follows:

1. The applicant provides proof that existing towers cannot service the area.
2. The applicant shows that the tower complies with Federal Aviation Administration regulations.
3. The applicant provides landscaping along the west side to enclose tower control area.

There were no comments from the public. The hearing was closed.

Chair Lenzmeier asked if establishing a “fall area” is part of the approval/review process. Larry stated that it’s not really a concern. They are required to have a Licensed Professional Engineer sign and stamp the plans.

Commissioner Gustofson made a motion for approval. Commissioner Smedshammer seconded the motion. No opposition. Motion carried.

The next item on the agenda was A08-4 Vacation of Access Easement for Lots 1 and 2, Block 1 of Simpson’s 4th Addition (1438 Sheyenne Street), City of West Fargo, North Dakota - Thompson

Steven reviewed the following information from the staff report:

The property is located south of 13th Avenue West, on the west side of Sheyenne Street. The applicant recently purchased the single family dwelling and vacant lot to the east. The two lots as well as an additional lot to the west are accessed by a 30-foot access easement which has been of record since at least 1988. The applicant has requested to vacate the access easement, because the lot to the west is in common ownership with another property having access onto River Street, and his property is being adversely impacted by the adjacent property owner. The vacation request would require a subdivision replat of the properties involved or following the statutory vacation process with several notices and hearing before the City Commission. The request is not consistent with City plans and ordinances.

The applicant proposes vacating the 30-foot access easement which provides access to Sheyenne Street for three properties. The private access easement was originally developed between owners of two affected properties in 1988 which provided access to a lot which was intended to be split and sold eventually for single family development. Subsequently a replat of Lots 17 & 18, less the east 272’, Block 2 of Simpson’s Second Subdivision was submitted for City approval. The replat established two lots, one of which had access to River Street, and the other had access to Sheyenne Street via the 20’ access easement which had been established privately.

In 1999 the east 272’ of Lots 17 and 18, Block 2 of Simpson’s Second Subdivision was replatted into two lots (Simpson’s 4th Addition). A single family dwelling was situated on Lot 1, and Lot 2 was being split off for purposes of sale to allow another single family dwelling. The City determined that the 20-foot access easement was not adequate to serve the public purpose of providing access to the three lots so the easement was required to be expanded to a 30-foot access easement. The access easement was being utilized in place of a public street which requires City approval as all lots are required to have public street access under the Subdivision Ordinance unless a private access easement is approved.

The property to the south, Lot 16 of Simpson’s Second Subdivision, was also utilizing the access easement for access to their property. The City noted that should this property be subdivided in the future, it may be appropriate to widen the access easement further. Last fall the City reviewed and approved a separate access for the property owner to the south because the new property owners were not willing to continue to share the access. Though the property owner had utilized and maintained the access for many years, there was no recorded access right.

Sheyenne Street is classified as a minor arterial which is a limited access street. Any access onto a collector or arterial street requires approval by the Planning and Zoning Commission and City Commission. Additional accesses are not encouraged as they result in additional conflict points on a street with heavy traffic. The Planning Office has provided notice to the adjacent property owners and City departments; however, there has not been much time for comments, because the application was just received and notices sent out. The City Assessor has indicated concern about the vacation request as it would leave a landlocked lot.

Though the applicant has the right to continue the vacation process by filing a replat of all affected parcels or following the statutory vacation process, there would be additional costs to be borne by the applicant. It is the position of the Planning Department, that the vacation request should not be approved by the City unless Lots 1 and 2, Block 1 of the Replat of Lots 17 & 18, Less the East 272’, Block 2 of Simpson’s Second Subdivision are combined; also, Lots 1 and 2, Block 1 of Simpson’s 4th Addition should be combined. This would be best facilitated by a replat of these properties so that the vacant lots could not be sold and no additional dwellings could be built on the lots. Prior to the replat, the recorded private access easement would need to be abolished after reaching mutual agreement.

It is recommended that the vacation request for the platted private access easement be denied at this time on the basis that two existing lots would be landlocked which would be in violation to the City's Subdivision Ordinance.

It is also recommended that the City would reconsider the request at a later date if the following conditions are met:

1. The affected property owners come to agreement and abolish the 20-foot access easement of record by recording a legal document.
2. The affected property owners agree to replat all the affected lots into two lots, one with access onto River Street and the second with access onto Sheyenne Street.

The applicant does have the right to move the request forward to the City Commission without meeting the two conditions above by following the statutory vacation procedure; however, the applicant will be responsible for covering the public hearing and legal costs associated with the vacation request without any guarantee that the City Commission will approve the request.

Larry stated that a comment was received from the Police Department, who indicated they feel there is a need for the access to remain.

Nancy Michelsen, 1444 River Street, stated that eliminating the easement would leave their property landlocked. When they purchased the property 18 months ago, they did so with the intent of possibly constructing a new home on the vacant lot.

Sherri Thompson, 1438 Sheyenne Street, stated that Cass County records do not show a Sheyenne Street address for the Michelsen's property, only River Street. Steven stated that there are two lots owned by the same property owner. The vacant lot is a separate, buildable lot.

Russell Thompson, 1438 Sheyenne Street, stated that the Register of Deeds has a River Street address, while the Treasurers office shows a separate address; however, it's one parcel. He indicated he shouldn't have to grant an easement to River Street.

Steven stated that if they were allowed to vacate the easement, Mr. Thompson's house would also become landlocked, as there is a vacant lot to the east of his home. Mr. Thompson stated that he owns that lot and he'd never sell or develop it.

Commissioner Gustofson stated that Lots 1 & 2 owned by the Michelsens, are two separate parcels.

Mrs. Thompson stated that Mrs. Tegtmeier to the south was never told she couldn't drive on the driveway. It was her choice to build the new one. Commissioner Gustofson asked if Mrs. Tegtmeier had a legal access to the driveway. Larry stated no.

Larry stated that from a zoning standpoint, the Michelsen's property is considered as one zoned lot, as there is a garage on the lot to the east and the structure alone makes it a nonconforming lot. Commissioner Gustofson stated that it is still a legal buildable lot. Larry stated yes.

Commissioner Gustofson asked the Thompsons how long they've lived in their home. Mr. Thompson stated a little over a year. They're on the hook to maintain the driveway and sometimes Mr. Michelsen takes 20 trips. It's hard to sit and watch someone wreck your driveway.

Commissioner Gustofson stated that the houses were built in the 1960s. They must have been aware of the easement. Mr. Thompson stated that the costs of maintaining a driveway have increased significantly over the past 40 years. As far as the Police, Ambulance and Fire needing access, they can go wherever they want anyway. He didn't understand why that was an issue.

Commissioner Gustofson stated that he seemed to recall that the Tegtmeiers to the south maintained the driveway. He asked about sharing the expense of maintaining the driveway. Mr. Thompson stated nope.

Commissioner Keller stated that when the property was listed, the shared access was made clear. Mr. Thompson stated that he didn't think anyone used the access.

Mrs. Michelsen stated that they pay taxes on two different parcels. Access to their detached garage is from Sheyenne Street.

Mr. Michelsen stated that they never asked about sharing maintenance. He stated that in terms of 20 trips up and down the

driveway per day... How many times a day should he be able to drive to and from his house? They wouldn't have even looked at the property if they'd known this was going to be such an issue. Mr. Thompson stated they never would've purchased the property either.

Commissioner Nelson stated that the purpose of the easement is to serve the landlocked parcels for the future and from the City standpoint, it needs to stay. Chair Lenzmeier suggested that the property owners sit down together and discuss this issue.

Commissioner Holzmer asked if they could go on to the City Commission. Larry stated that they'll either need to replat or vacate it, which will take 4 publications in the official newspaper. Even if the easement is vacated and lots combined, they will still have a private easement, which was granted by the original property owner. The 20' private access is there in perpetuity, unless both parties involved agree to eliminate it.

Commissioner Nelson made a motion to deny the request. Commissioner Holzmer seconded the motion. No opposition. Motion carried.

The next item on the agenda was Continued - A08-1 Sandhills 3rd Addition, a Replat, Rezoning from A: Agricultural to CM: Heavy Commercial/Light Industrial and Conditional Use Permit for Storage for All of Blocks 1, 2 and 3 of Sandhills 2nd Subdivision, City of West Fargo, North Dakota - Wyum

Larry reviewed the following information from the staff report:

At the last Planning and Zoning Commission meeting a site plan for the conditional use permit application was reviewed for Lot 2, Block 3 of the proposed Sandhills Third Addition. Also, an infrastructure plan was presented for consideration. The Planning and Zoning Commission tabled action until an area plan meeting could be held with property owners to discuss development considerations and timing of infrastructure.

A meeting with property owners, developers and staff was held on January 24, 2008. Unfortunately, few developers were present, so their intentions were not clear. The Sandhills developer indicated that sewer and water services were not needed for 2-3 years. The intent is to construct a building for storage of materials and equipment initially. The Butler development indicated prior to the meeting that they do not have any plans to plat and service the area west of the currently platted area. They intend to develop the platted property first and wait to attract larger industrial users for the property to the west. Since the meeting we have received an indication from the other area developers that they will likely request services in the near future and initiate development plans. However, the developers did not have a firm timeframe to begin development.

Follow-up meetings were held with the Sandhills developer and representatives who indicated a willingness to sign a developer's agreement not opposing services that may be provided after three years, and limiting further building construction until the area is serviced. The developer would not obligate the City to provide services, and if needed the developer would provide their own water and a sewage holding tank. The developer would install municipal water and sewer services as soon as they are available. This appears to be a reasonable and manageable request for the City to approve.

With regards to the criteria for granting conditional uses the following is noted for the proposed storage building on Lot 2, Block 3 of the proposed Sandhills 3rd Addition:

1. Ingress and egress to the property are from Sandhills Avenue NW which is a local street.
2. The proposed structure provides for adequate setbacks and off-street parking which should not affect traffic circulation in the area.
3. The economic noise, glare or odor effect of the proposed use on adjoining properties and properties generally in the district is not an issue.
4. Refuse and service areas and utilities are not problematic. A developer's agreement providing for municipal services will be established.
5. Screening for storage yards will be provided according to the Zoning Ordinance requirements. The site plan provides for storage behind the building.
6. Signage would be according to the sign regulation.
7. Yards and open space as provided are adequate.
8. The proposed structure does not appear to be affected by soil conditions as they relate to water supply, basement excavating, road construction and related land use.
9. The proposed use is viewed as generally compatible with adjacent properties and other property in the district.

It is recommended to conditionally approve the subdivision and rezoning request based on the development's consistency with City plans and ordinances. The conditions of approval are as follows:

1. A certificate is received showing taxes are current.
2. The infrastructure servicing plan is approved by the City Engineer
3. A drainage plan is received and approved by the City Engineer.
4. Any necessary easements and lift station needs are provided for on the Final Plat.
5. A park dedication agreement is received.
6. A mail delivery plan is approved by the Post Office and area identified for cluster boxes.
7. A subdivision improvement agreement is received providing for appropriate timing for municipal services, providing for a building on the conditional use property, and limiting buildings on other lots until services are provided.
8. Any proposed restrictive covenants should be prepared by the developer and recorded with the Final Plat.

Chair Lenzmeier asked about the existing road structure. Larry stated that it's a gravel road. With increased traffic, they may need to look at improving the road.

Chair Lenzmeier asked what if there was a fire. Larry stated that the Fire Department would need to go out with tanker trucks. If the use was different, where a sprinkler system was needed then the use wouldn't be allowed until City services were extended.

Commissioner Gustofson asked if someone could develop and build on the adjacent lots. Larry stated only once City services came in. This would be included in the developer's agreement.

Commissioner Nelson made a motion for approval based on staff recommendations. Commissioner Keller seconded the motion. No opposition. Motion carried.

Commissioner Gustofson asked if someone purchased a lot if there will be a deed restriction regarding development. Larry stated that this would be on the developer's agreement and the developer would be held to it. Applicant Dave Wyum stated that this would also be included in the purchase agreement.

The next item on the agenda was Continued - A07-48 Variance to allow increased signage for Lot 1, Block 1 of Butler 6th Addition (2130 3rd Avenue NW), City of West Fargo, North Dakota - Cook Sign

Steven reviewed the following information from the staff report:

The property is located on the northwest corner of 3rd Avenue NW and 21st Street NW. The requested variance to increase the signage by 130.5 ft² would be to allow the applicant to exceed the maximum size for a single on-premise sign. The maximum size for any single (on-premise) sign within the CM zoning district is 200 ft². The existing sign is 330.5 ft². A variance is required to exceed an amount of allowable signage under the City's Sign Regulations of the Zoning Ordinance.

The applicant is requesting 330.5 ft² of wall signage. The maximum allowable size for an on-premise sign for this property is 200 ft², which was exceeded by 130.5 ft² by the existing, previously installed, sign. The existing sign was installed without a permit or permit review by the planning department and/or building department.

Variances are only to be granted when the following can be demonstrated:

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
2. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
3. That the special conditions and circumstances do not result from the actions of the applicant;
4. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.

It does not appear the variance can be justified as none of the criteria listed above are met. There are no special conditions and circumstances that exist with the property or buildings that are not applicable to other lands or buildings in the same zoning district. The property owner is not being deprived of rights being enjoyed by others because of the ordinance provisions. The

conditions and circumstances do result from the actions of the applicant. If the variance would be granted, the applicant would benefit from a special privilege that would not be provided to other lands, structures, or buildings in the same district.

Notices were sent to area property owners within 150' and comments were received from Trail King explaining the situation from their perspective noting that this was not their company's attempt to circumvent city ordinances. The City Commission denied the applicants request to amend the Zoning Ordinance to allow signs larger than 200 ft² at their January 21st meeting.

It is recommended to deny the request on the basis that the proposed signage does not meet the criteria to justify the variance.

Brett Waldera, Director of Sales for Cook Sign, stated that he tried applying for a zoning ordinance amendment. He's trying to find a solution to this, tried to address the 4 criteria... He's struggling to figure out what he can do. He believes the sign doesn't infringe on other properties, it isn't aesthetically unappealing. He's asking for a variance. He doesn't believe tearing down the side would be beneficial as it isn't an eyesore.

Mr. Waldera asked if Steven had a picture of the sign. Steven stated that from a Planning and Zoning standpoint, it wouldn't have an impact. The Planning and Zoning Commission cannot approve the sign based on that; they have to review it under the variance criteria. If it meets one or two of the criteria then they can look at granting a variance.

Commissioner Smedshammer asked why the sign went up without a permit. Mr. Waldera stated that it was an error -- Trail King had a short time frame, wanted the sign placed as soon as possible. Since then, they've addressed this internally and they will not install a sign until the permit is in hand.

Mr. Waldera stated that he's been with Cook Sign for 7 years and isn't going to gamble. It was never his intent to circumvent the system, procedures. It was a mistake and he apologizes for it.

Commissioner Gustofson stated that he can go online and get the rules. He questioned a 150 ft² error above the 200 ft² cap. Mr. Waldera stated that somehow that page was missing from his binder, it wasn't updated.

Commissioner Nelson stated that the sign looks good, but the Planning and Zoning Commission's role is to measure to the code. He wasn't sure they could do anything.

Commissioner Keller asked if they approve it, how many people are going to come back and ask for one also. Mr. Waldera stated that he understands, but sign companies are self regulating. He stated that the Trail King sign only covers 3% of the building façade. They're being penalized because they have a long name.

Steven stated that he spoke with John Rust from Trail King. They don't want to go through having to change out the sign. Steven explained to him the variance procedure criteria and that this sets a huge precedent. Sign companies will ask for increased signage. Staff has already been contacted about it.

Commissioner Keller asked if they felt the City was penalizing them because they were Trail King. Steven stated they didn't, they realize the situation the City is in.

Mr. Waldera stated that if the sign has to be removed, Cook Sign is going to have to accept responsibility. No costs will be incurred by Trail King.

Commissioner Holzmer made a motion to deny the variance request. Commissioner Smedshammer seconded the motion. No opposition. Motion carried.

Under non-agenda, Larry stated that staff will have a revised copy of the Planning and Zoning Commission bylaws available for review.

Commissioner Nelson made a motion to adjourn. Commissioner Potter seconded the motion. No opposition. Meeting adjourned.